

ST 00-0119-GIL 06/30/2000 ROLLING STOCK EXEMPTION

Effective August 14, 1999, motor vehicles, trailers, and property attached to those motor vehicles and trailers must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12- month period to qualify for the exemption. See 35 ILCS 120/2-51 and 86 Ill. Adm. Code 130.340. (This is a GIL).

June 30, 2000

Dear Xxxxx:

This letter is in response to your letter we received on June 5, 2000. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

My name is PERSON, and I am a summer intern for the STATE Department of Revenue. As a intern, I will be conducting legal research, including comparisons of tax laws among all of the states in the nation, in preparation for the 2001 legislative session in STATE.

One of my tasks is to conduct a survey regarding one of our sales tax exemptions. We are curious to know how other states have dealt with sales of tangible personal property that is 'substantially used' in interstate commerce. STATE law exempts:

Sales of railroad rolling stock including locomotives purchased by interstate railroads, aircraft purchased by interstate air carriers which are holders of valid United States civil aeronautics board permits or authorities and trucks, truck-tractors, trailers, semitrailers and passenger buses which are purchased by common or contract interstate carriers or which are operating in interstate commerce under exemption clauses in federal law if they are to be substantially used in interstate commerce.

I am contacting every state to discover if your state has a statute which is similar to this exemption. I would appreciate a hard copy of any pertinent information by May 24, 2000. This can be sent through email ##### or by mail to the STATE Department of Revenue. Please reply to this letter regardless of whether or not you have any information which might help me so that I know you have received it.

Thank you for your assistance. For further information or questions, you can contact me at #####.

The Illinois Retailers' Occupation Tax and Use Tax do not apply to sales of tangible personal property to interstate carriers for hire for use as rolling stock moving in interstate commerce. The Department's rules governing the rolling stock exemption are found at 86 Ill. Adm. Code 130.340, copy enclosed.

The exemption applies to sales of tangible personal property to lessors under leases of one year or longer executed or in effect at the time of purchase with interstate carriers for hire for use as rolling stock moving in interstate commerce. A lessor will not incur Use Tax on the purchase of the vehicle that is leased to the interstate carrier for hire for use as rolling stock moving in interstate commerce under a lease term of one year or longer. See 35 ILCS 105/3-55(b) and 120/2-5(12). If a lessor leases a vehicle to an interstate carrier for hire under a lease term of less than one year, the rolling stock exemption is also available because the tax does not apply to the use by (or sale to) lessors, owners, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce. See 35 ILCS 105/3-55(c) and 120/2-5(13).

Effective August 14, 1999, motor vehicles, trailers, and property attached to those motor vehicles and trailers must carry persons or property for hire in interstate commerce on 15 or more occasions within a 12- month period to qualify for the exemption. See 35 ILCS 120/2-51. For other types of property used in interstate commerce, the interstate carriers must be able to show, from their books and records, that the property has moved in interstate commerce for hire on a regular and frequent basis in order to qualify for the exemption.

Purchasers also must be recognized by the appropriate federal or state regulatory agency as interstate carriers for hire and have received a Certificate of Authority to engage in interstate commerce. Please note that it is not the type of item that determines whether or not it qualifies as rolling stock, but rather how a qualifying interstate carrier uses the item. In addition to receiving the proper Certificate of Authority, purchasers should be aware that only those items used specifically as rolling stock would qualify. See the enclosed copy of 86 Ill. Adm. Code 130.340.

I hope this information is helpful. The Department of Revenue maintains a website, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

Very truly yours,

Terry D. Charlton
Associate Counsel

TDC:msk
Enc.